

1 VALERIA CALAFIORE HEALY (*pro hac vice*)

[valeria.healy@healylex.com](mailto:valeria.healy@healylex.com)

2 ERIC LERNER (*pro hac vice*)

DIANA WONG (*pro hac vice*)

3 HEALY LLC

154 Grand Street

4 New York, New York 10013

Telephone: (212) 810-0377

5 Facsimile: (212) 810-7036

6 DANIEL J. WEINBERG (SBN 227159)

[dweinberg@fawlaw.com](mailto:dweinberg@fawlaw.com)

7 FREITAS ANGELL & WEINBERG LLP

350 Marine Parkway, Suite 200

8 Redwood Shores, California 94065

Telephone: (650) 593-6300

9 Facsimile: (650) 593-6301

10 Attorneys for Plaintiff

LOOP AI LABS INC.

12 UNITED STATES DISTRICT COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14  
15 LOOP AI LABS INC.,

16 Plaintiff,

17  
18 v.

19 ANNA GATTI, et al,

20 Defendants.

CASE NO.: 3:15-cv-00798-HSG-DMR

**PLAINTIFF LOOP AI LABS INC.'S  
MOTION FOR RELIEF FROM  
NONDISPOSITIVE PRETRIAL ORDER  
REGARDING JURISDICTIONAL  
DISCOVERY AND OBJECTIONS  
PURSUANT TO FED. R. CIV. P. 72 AND  
L.R. 72-2**

Action Filed: February 20, 2015

Trial Date: July 11, 2016

Hon. Haywood S. Gilliam, Jr.

Pursuant to Local Rule 72-2 and Federal Rule of Civil Procedure 72, Loop AI Labs Inc. (“Loop AI”) respectfully objects to and moves for relief from the Order relating to jurisdictional discovery entered on December 11, 2015 at page 1 of Docket 323 (the “Jurisdictional Discovery Order”).<sup>1</sup> In support of these Objections, Loop AI respectfully submits the Declaration of VCHealy, dated December 28, 2015, the exhibits attached thereto, and all other evidence and arguments already of record with the Court in this case. Loop AI respectfully objects to the Jurisdictional Discovery Order on the following three grounds.

**(1) The Order Fails to Require the Italian Almaviva Defendants To Comply With Any Documentary Discovery.**

The Order fails to require Almaviva S.p.A. and Almawave S.r.l. (“Italian Almaviva Defendants”) to respond to any documentary discovery, and fails to require Defendant Almawave USA Inc. (“AW-USA”) to respond to documentary discovery that is material to jurisdictional issues, essentially defeating the purpose of the jurisdictional aspect of the discovery process. *See* Dkt. 323. On May 26, 2015, this Court issued a global discovery Order to govern this case, as reflected in a Case Management Order filed on June 5, 2015 at Dkt. 105 (the “CMO”). *See* Dkts. 100, 105, 111.<sup>2</sup> During the May 26<sup>th</sup> hearing on the CMO, the Italian Almaviva Defendants requested that the Court order phased discovery, arguing among other things that there was no jurisdiction over them. *See* Dkt. 98 at 5:19. The Court, however, rejected that proposal, and issued instead a global order governing discovery for *all parties in the case*. *See* Dkts. 100, 105, 111. Both before and after issuance of the CMO, Loop AI served discovery requests on each Defendant, including each of the Italian Almaviva Defendants. *See* Dkts. 9-1, 300-8 to 300-14.<sup>3</sup> To the extent the Italian Almaviva Defendants responded to Loop AI’s discovery, they did so by repeating the same jurisdictional objection everywhere.<sup>4</sup> AW-

<sup>1</sup> The Jurisdictional Discovery Order was entered following a hearing held on December 10, 2015. *See* Dkt. 335 filed on December 22, 2015 (Transcript of Hearing held on December 10, 2015).

<sup>2</sup> During the May 25, 2015 hearing the Court also heard argument that the Italian Almaviva Defendants should not be required to engage in discovery in light of their pending motion to dismiss for lack of personal jurisdiction. Dkt. 111 at 7-8. The Court addressed Almaviva’s counsel argument as follows: “if you want to move for a stay – and I don’t express any point of view on that ....” *Id.* at 9:20-21. The Italian Almaviva Defendants, however, **never moved for a stay of discovery.**

<sup>3</sup> *See also* Dkt. 300 at 5-8 (detailing Loop AI’s repeated attempts to obtain discovery and to seek the Court’s intervention to obtain the Defendants’ compliance with their discovery obligations).

<sup>4</sup> “Almawave S.r.l. objects to this request and does not provide a response on the grounds that the Court has

USA and the other Defendants also objected to all discovery requests on various grounds. *Id.* 272-2, 272-5, 272-6.<sup>5</sup> On September 2, 2015, the Court issued an Order *denying* without prejudice the Italian Almoviva Defendants' motion to dismiss for lack of personal jurisdiction. Dkt. 183 ("Order-183"). Nowhere in Order-183 does it state that Loop AI has failed to establish a *prima facie* case of personal jurisdiction or that the Court finds it does not have personal jurisdiction over the Italian Almoviva Defendants at this stage of the case. *Id.* Despite Order-183, the Italian Almoviva Defendants continue to maintain that they are not subject to discovery in this case. As of the date of the December 10, 2015 hearing before Judge Ryu, Loop AI had received *no documentary discovery from the Italian Almoviva Defendants nor from any other defendant in the case.* At the December 10, 2015 hearing, counsel for the Italian Almoviva Defendants argued that he would be responding to all documentary discovery on behalf of all three Almoviva Defendants and that therefore there was no need for the Court to distinguish between jurisdictional and other discovery. Dkt. 335 at 24, 20-25. Following the December 10, 2015 Hearing, the Court issued the Jurisdictional Discovery Order which does not include any documentary discovery requirement or obligation directed to the Italian Almoviva Defendants, beyond answering a few interrogatories. *See* Dkt. 323. The Almoviva Defendants have promptly seized on the Order's failure to impose any discovery requirements on the Italian Almoviva Defendants to maintain their position that they are not required to engage in any documentary discovery. During a meet and confer held on December 18, 2015, counsel for the Italian Almoviva Defendants confirmed that the Italian Almoviva Defendants will not respond to any discovery requests, beyond what they have already done, *i.e.*, providing objections to all

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not yet determined that it has personal jurisdiction over Almoviva S.r.l.; obligating Almoviva S.r.l. to participate in discovery before personal jurisdiction is determined violates Constitutional requirements of due process. The Court has ordered that only limited jurisdictional discovery may proceed; which discovery has not yet been approved by stipulation or Court order." Dkts. 272-4 (Almoviva S.r.l.) and 272-3 (Almoviva S.p.A.) at *passim*.

<sup>5</sup> This position found no basis in the CMO – indeed, the CMO provided for discovery to close at the end of January 2019. If the Court intended to exempt the Italian Almoviva Defendants from discovery, it would have so stated in its Order, and the CMO would not have provided that all discovery was to proceed and close at the end of January 2016. Furthermore, the Court found personal jurisdiction to exist on the face of the complaint and denied the Italian Almoviva Defendants' motion to dismiss for lack of personal jurisdiction. *See* Dkt. 183.

discovery requests.<sup>6</sup> The Order's failure to impose any documentary discovery requirements on the Italian Almoviva Defendants is in error. Loop AI was and is entitled to obtain discovery from all the Defendants in the case, including the Italian Almoviva Defendants who have skirted their discovery obligations for an extended period of time. Neither the CMO nor Order-183 exempts the Italian Almoviva Defendants (or the other defendants) from engaging in discovery. Loop AI respectfully requests that the Jurisdictional Discovery Order be modified to require the Italian Almoviva Defendants promptly to respond to all discovery,<sup>7</sup> and to submit amended discovery responses so that Loop AI can identify which discovery requests they need to move to compel on.

**(2) The Order Fails To Allow A Reasonable Amount of Time to Obtain And Review Documentary Discovery Before Undertaking Depositions.**

Loop AI respectfully objects to the Jurisdictional Discovery Order because (a) it requires Loop AI to undertake depositions before it has received documentary discovery from four out of the five Defendants, and (b) it fails to allow a reasonable amount of time to review the production (which consist virtually entirely of foreign language documents) that Almoviva USA has just began making. As of the date of the December 10, 2015 hearing, Loop AI had not yet received any documentary discovery from any defendant in this case.<sup>8</sup> VCH Decl. at ¶4. Documentary discovery is material and necessary to respond to the jurisdictional defenses that the Italian Almoviva Defendants wish to again interpose. As to the Gatti and IQSystem Defendants, the Court's Order directs them "to produce all documents that are not subject to objections by 12/18/2015." Dkt. 323. *See* Dkt. 323 at 1-2. Because the Gatti/IQSystem Defendants have objected to every discovery request that was served on them, *see* Dkt. 272-5 and 272-6, to date the Court's Order has yielded a production of **161 documents** from Gatti (the

<sup>6</sup> *See* Dec. 18, 2015 Meet and Confer audio-recording at minute 30:07 and 32:05. A copy of the audio-recording can be submitted to the Court upon request.

<sup>7</sup> At the December 10, 2015 hearing Mr. Wallerstein expressly argued to the Court there was no need to distinguish jurisdictional versus non-jurisdictional discovery. Dkt. 335 at 19.

<sup>8</sup> Loop AI has repeatedly sought the Court's intervention to compel the Defendants to respond to Loop AI's discovery. *See e.g.* Dkt. 300 at 7 (detailing Loop AI's efforts). The Court has either summarily denied Loop AI's request for permission to file motions to compel (a request required by the Court's Standing Order), or has otherwise not yet ruled on the remaining motions – namely, a Motion to Enforce filed on September 25, 2015 at Dkt. 214 (a motion to which no Defendant responded), and a Motion for Modification of the Case Management Order and for Sanctions, filed on November 23, 2015 at Dkt. 300.

majority of which relate to 2012 and have no jurisdictional relevance), zero documents from IQSystem LLC, and 89 documents by IQSystem Inc. (recently supplemented with another 7 documents, for a grand total of 96 documents including attachments).<sup>9</sup> These Defendants continue to withhold material discovery that is critical to both the merits and the jurisdictional issues of this case. Similarly, AW-USA has objected to virtually all discovery, including discovery relevant to jurisdictional matters. Since December 11, 2015, AW-USA has produced to Loop AI a total of 5,399 documents, which contain 1,406 attachments.<sup>10</sup> See VCH Decl. at ¶9. The documents produced by AW-USA appear to be primarily in a foreign language – Italian. In light of the foregoing timeline and state of documentary discovery, the Court’s Order is in error because it fails to allow Loop AI the opportunity to get discovery consistent with the Federal Rules of Civil Procedure and the Court’s Case Management Order. Specifically, the Jurisdictional Discovery Order fails to implement any measures to allow Loop AI to obtain material documentary discovery from the Defendants before Loop AI is required to go forward with jurisdictional depositions, and fails to allow sufficient time to review the documents produced before designating the jurisdictional deponents. Instead, the Court’s Order requires Loop AI to designate all jurisdictional deponents by January 4, 2015, and to take all their depositions between January 18-22, 2016. Because AW-USA has just begun making its production on December 11, 2015, and claims it will make further productions on December 30, 2015, Loop AI simply will not have sufficient time to even review (let alone translate) the productions received and prepare for depositions. Under the Federal Rules of Civil Procedure Loop AI is entitled to obtain discovery and to have a reasonable amount of time to review the discovery received before taking depositions.<sup>11</sup>

**(3) The Order Unreasonably Restricts the Number and Hours of Depositions.** The

<sup>9</sup> See also note 5 *supra* regarding Loop AI’s attempts to seek the Defendants’ compliance with their discovery obligations.

<sup>10</sup> Almagiva’s counsel also advised the Court it would be making an additional production on **December 30, 2015**. Because of the end-of-year holiday, any supplemental production made on December 30, 2015, cannot be processed and will not be available for Loop AI’s review until January 4, 2015.

<sup>11</sup> Loop AI has been seeking discovery, including as it relates to jurisdictional matters, from the inception of the case and at every stage thereafter. For instance, Loop AI reiterated its request to allow prompt discovery in its opposition to the Almagiva Defendants motion to dismiss on May 11, 2015, see Dkt. 91 at 13, as well as in subsequent filings. See Dkt. 106 and 120.

1 Order limits jurisdictional depositions to 28 hours to include either up to 8 Al maviva deponents,  
2 and no other deponent, or up to 6 Al maviva deponents if additional deponents are selected.  
3 These limitations are unreasonable for the following reasons: (1) in support of its personal  
4 jurisdiction defense, Al maviva submitted the declarations of **9 separate witnesses**, each of  
5 which are employees of Al maviva S.p.A. and/or Al mawave S.r.l. and each of which claimed to  
6 have unique knowledge about matters at issue in the case. Loop AI is entitled to depose each of  
7 the witnesses on whom Al maviva has relied on and continues to rely on, but cannot do so under  
8 the Court's limitations. Further, from the limited production received to date, it is clear that  
9 there are additional witnesses (for instance Marco Tripi and Sergio Calderara) who did not  
10 previously submit a declaration but who are material participants in the matters at issue in the  
11 case and who are highly relevant witnesses to the jurisdictional issues. The limitations in the  
12 Court's Order, however, do not allow Loop AI to obtain this testimonial discovery. Further, to  
13 the extent Loop AI deposes any non-Al maviva witnesses in respect of jurisdictional matters, its  
14 ability to depose Al maviva witnesses under the Order is further reduced, leaving Al maviva the  
15 option to make one-sided arguments on which Loop AI is allowed no discovery.  
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17  
18 For the foregoing reasons, Loop AI respectfully objects to the Jurisdictional Discovery  
19 Order, and requests an opportunity to fully brief the issues. In the alternative, Loop AI seeks a  
20 Jurisdictional Discovery Order to be revised as follows: (1) requiring all Defendants to promptly  
21 respond to all outstanding discovery, including by serving amended responses to written  
22 discovery requests identifying whether any production is being made in response to specific  
23 requests, (2) allowing at least 3 weeks to review the production and submit objections to the  
24 Court for missing productions of jurisdictionally relevant documents, and (3) allowing up to 10  
25 jurisdictional depositions, regardless of whether the deponent is an Al maviva employee or not,  
26 and up to 30 hours of deposition, excluding any translation time, and ordering all translation time  
27 to be excluded from the total deposition time allowed to Loop AI.  
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Respectfully submitted,

December 28, 2015

By: /s/ Valeria Calafiore Healy

Valeria Calafiore Healy, Esq. (phv)  
Valeria.healy@healylex.com  
Eric Lerner, Esq. (phv)  
Diana Wong, Esq. (phv)  
HEALY LLC  
154 Grand Street  
New York, New York 10013  
Telephone: (212) 810-0377  
Facsimile: (212) 810-7036

Daniel J. Weinberg, Esq. (SBN 227159)  
dweinberg@fawlaw.com  
FREITAS ANGELL & WEINBERG  
LLP  
350 Marine Parkway, Suite 200  
Redwood Shores, California 94065  
Telephone: (650) 593-6300  
Facsimile: (650) 593-6301

Attorneys for Plaintiff  
LOOP AI LABS, INC.